

# SENATE, No. 244

## STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

**Sponsored by:**

**Senator CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Senator PHILIP E. HAINES**

**District 8 (Burlington)**

**Co-Sponsored by:**

**Senators Oroho, Pennacchio, O'Toole, Singer, A.R.Bucco, Cardinale,  
Kyrillos, Beck, Ciesla, S.Kean, T.Kean and Baroni**

**SYNOPSIS**

Revises laws governing provision of affordable housing; reestablishes regional contribution agreement as method of meeting affordable housing obligation; repeals Statewide non-residential development fee.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 **AN ACT** concerning affordable housing, revising various parts of  
 2 the statutory law and supplementing P.L.1975, c.291 (C.40:55D-  
 3 1 et seq.) and P.L.1985, c.222 (C.52:27D-301 et al.).  
 4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
 6 *of New Jersey:*  
 7

8 1. Section 1 of P.L.2004, c.140 (C.52:27D-287.1) is amended  
 9 to read as follows:

10 1. The Commissioner of Community Affairs shall establish a  
 11 rental assistance program for low income individuals or households.  
 12 This program shall be in addition to and supplement any existing  
 13 programs established pursuant to the "Prevention of Homelessness  
 14 Act (1984)," P.L.1984, c.180 (C.52:27D-280 et al.).

15 a. The program shall provide rental assistance grants  
 16 comparable to the federal section 8 program, but shall be available  
 17 only to State residents who are not currently holders of federal  
 18 section 8 vouchers.

19 b. Assistance to an individual or household under the State  
 20 program shall be terminated upon the award of federal section 8  
 21 rental assistance to the same individual or household.

22 c. The program shall reserve a portion of the grants for  
 23 assistance to senior citizens aged 62 or older who otherwise meet  
 24 the criteria of subsection a. of this section.

25 d. The program shall reserve a portion of the grants for  
 26 assistance to veterans who have successfully completed the  
 27 Veterans Transitional Housing Program, or "Veterans Haven," a  
 28 vocational and transitional housing program for homeless veterans  
 29 administered by the New Jersey Department of Military and  
 30 Veterans' Affairs.

31 e. Municipalities shall be permitted under the program to  
 32 sponsor rental vouchers, subject to the approval of the Council on  
 33 Affordable Housing, and in accordance with the regulations  
 34 promulgated by the council to effectuate the "Fair Housing Act,"  
 35 P.L.1985, c.222 (C52:27D-301 et al.).

36 (cf: P.L.2007, c.237, s.1)  
 37

38 2. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to  
 39 read as follows:

40 2. The Legislature finds that:

41 a. The New Jersey Supreme Court, through its rulings in South  
 42 Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975)  
 43 and South Burlington County NAACP v. Mount Laurel, 92 N.J. 158  
 44 (1983), has determined that every municipality in a growth area has  
 45 a constitutional obligation to provide through its land use

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
 not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 regulations a realistic opportunity for a fair share of its region's  
2 present and prospective needs for housing for low and moderate  
3 income families.

4 b. In the second Mount Laurel ruling, the Supreme Court stated  
5 that the determination of the methods for satisfying this  
6 constitutional obligation "is better left to the Legislature," that the  
7 court has "always preferred legislative to judicial action in their  
8 field," and that the judicial role in upholding the Mount Laurel  
9 doctrine "could decrease as a result of legislative and executive  
10 action."

11 c. The interest of all citizens, including low and moderate  
12 income families in need of affordable housing, and the needs of the  
13 workforce, would be best served by a comprehensive planning and  
14 implementation response to this constitutional obligation.

15 d. There are a number of essential ingredients to a  
16 comprehensive planning and implementation response, including  
17 the establishment of reasonable fair share housing guidelines and  
18 standards, the initial determination of fair share by officials at the  
19 municipal level and the preparation of a municipal housing element,  
20 State review of the local fair share study and housing element, and  
21 continuous State funding for low and moderate income housing to  
22 replace the federal housing subsidy programs which have been  
23 almost completely eliminated.

24 e. The State can maximize the number of low and moderate  
25 income units provided in New Jersey by allowing its municipalities  
26 to adopt appropriate phasing schedules for meeting their fair share,  
27 so long as the municipalities permit a timely achievement of an  
28 appropriate fair share of the regional need for low and moderate  
29 income housing as required by the Mt. Laurel I and II opinions and  
30 other relevant court decisions.

31 f. The State can also maximize the number of low and  
32 moderate income units by creating new affordable housing and by  
33 rehabilitating existing, but substandard, housing in the State.  
34 **【Because the Legislature has determined, pursuant to P.L.2008,**  
35 **c.46 (C.52:27D-329.1 et al.), that it is no longer appropriate or in**  
36 **harmony with the Mount Laurel doctrine to permit the transfer of**  
37 **the fair share obligations among municipalities within a housing**  
38 **region, it】** It is necessary and appropriate to create a **【new】**  
39 program to create new affordable housing and to foster the  
40 rehabilitation of existing, but substandard, housing.

41 g. Since the urban areas are vitally important to the State,  
42 construction, conversion and rehabilitation of housing in our urban  
43 centers should be encouraged. However, the provision of housing  
44 in urban areas must be balanced with the need to provide housing  
45 throughout the State for the free mobility of citizens.

46 h. The Supreme Court of New Jersey in its Mount Laurel  
47 decisions demands that municipal land use regulations affirmatively

1 afford a reasonable opportunity for a variety and choice of housing  
2 including low and moderate cost housing, to meet the needs of  
3 people desiring to live there. While provision for the actual  
4 construction of that housing by municipalities is not required, they  
5 are encouraged but not mandated to expend their own resources to  
6 help provide low and moderate income housing.

7 i. Certain amendments to the enabling act of the Council on  
8 Affordable Housing are necessary to provide guidance to the  
9 council to ensure consistency with the legislative intent, while at the  
10 same time clarifying the limitations of the council in its rulemaking.  
11 Although the court has remarked in several decisions that the  
12 Legislature has granted the council considerable deference in its  
13 rulemaking, the Legislature retains its power and obligation to  
14 clarify and amend the enabling act from which the council derives  
15 its rulemaking power, from time to time, in order to better guide the  
16 council.

17 j. **【The Legislature finds that the use of regional contribution**  
18 **agreements, which permits municipalities to transfer a certain**  
19 **portion of their fair share housing obligation outside of the**  
20 **municipal borders, should no longer be utilized as a mechanism for**  
21 **the creation of affordable housing by the council.】** (Deleted by  
22 amendment, P.L. , c. ) (pending before the Legislature as this  
23 bill)

24 k. The Legislature finds and declares that New Jersey is  
25 significantly affected by the current economic downturn. The  
26 current state of the economy has led to an increase in home  
27 mortgage foreclosures in this State. Increased foreclosures have led  
28 to a supply of units for sale that are vacant or likely to soon become  
29 vacant.

30 (cf: P.L.2008, c.46, s.4)

31  
32 3. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to  
33 read as follows:

34 4. As used in this act:

35 a. "Council" means the Council on Affordable Housing  
36 established in this act, which shall have primary jurisdiction for the  
37 administration of housing obligations in accordance with sound  
38 regional planning considerations in this State.

39 b. "Housing region" means a geographic area of not less than  
40 two nor more than four contiguous, whole counties which exhibit  
41 significant social, economic and income similarities, and which  
42 constitute to the greatest extent practicable the primary metropolitan  
43 statistical areas as last defined by the United States Census Bureau  
44 prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.).

45 c. "Low income housing" means housing affordable according  
46 to federal Department of Housing and Urban Development or other  
47 recognized standards for home ownership and rental costs and

1 occupied or reserved for occupancy by households with a gross  
2 household income equal to 50% or less of the median gross  
3 household income for households of the same size within the  
4 housing region in which the housing is located.

5 d. "Moderate income housing" means housing affordable  
6 according to federal Department of Housing and Urban  
7 Development or other recognized standards for home ownership  
8 and rental costs and occupied or reserved for occupancy by  
9 households with a gross household income equal to more than 50%  
10 but less than 80% of the median gross household income for  
11 households of the same size within the housing region in which the  
12 housing is located.

13 e. "Resolution of participation" means a resolution adopted by  
14 a municipality in which the municipality chooses to prepare a fair  
15 share plan and housing element in accordance with this act.

16 f. "Inclusionary development" means a residential housing  
17 development in which a substantial percentage of the housing units  
18 are provided for a reasonable income range of low and moderate  
19 income households.

20 g. "Conversion" means the conversion of existing commercial,  
21 industrial, or residential structures for low and moderate income  
22 housing purposes where a substantial percentage of the housing  
23 units are provided for a reasonable income range of low and  
24 moderate income households.

25 h. "Development" means any development for which  
26 permission may be required pursuant to the "Municipal Land Use  
27 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

28 i. "Agency" means the New Jersey Housing and Mortgage  
29 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et  
30 seq.).

31 j. "Prospective need" means a projection of housing needs  
32 based on development and growth which is reasonably likely to  
33 occur in a region or a municipality, as the case may be, as a result  
34 of actual determination of public and private entities. In  
35 determining prospective need, consideration shall be given to  
36 approvals of development applications, real property transfers and  
37 economic projections prepared by the State Planning Commission  
38 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-  
39 196 et seq.).

40 k. "Disabled person" means a person with a physical disability,  
41 infirmity, malformation or disfigurement which is caused by bodily  
42 injury, birth defect, aging or illness including epilepsy and other  
43 seizure disorders, and which shall include, but not be limited to, any  
44 degree of paralysis, amputation, lack of physical coordination,  
45 blindness or visual impediment, deafness or hearing impediment,  
46 muteness or speech impediment or physical reliance on a service or  
47 guide dog, wheelchair, or other remedial appliance or device.

1 l. "Adaptable" means constructed in compliance with the  
2 technical design standards of the barrier free subcode adopted by  
3 the Commissioner of Community Affairs pursuant to the "State  
4 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119  
5 et seq.) and in accordance with the provisions of section 5 of  
6 P.L.2005, c.350 (C.52:27D-123.15).

7 m. "Very low income housing" means housing affordable  
8 according to federal Department of Housing and Urban  
9 Development or other recognized standards for home ownership  
10 and rental costs and occupied or reserved for occupancy by  
11 households with a gross household income equal to 30% or less of  
12 the median gross household income for households of the same size  
13 within the housing region in which the housing is located.

14 n. "Growth" means, for the purposes of P.L.1985, c.222  
15 (C.52:27D-301 et al.), including, but not limited to, the calculations  
16 of affordable housing need, the number of units of actual new  
17 residential construction not reserved for occupancy by low and  
18 moderate income households located on previously vacant land  
19 within a municipality.

20 o. "Market to affordable program" means a program to pay  
21 down the cost of market-rate units, including units in foreclosure,  
22 and offer them in sound condition, for sale or rent, at affordable  
23 prices to low- and moderate-income households to address all or a  
24 portion of the fair share obligation.

25 p. "New residential construction" means newly-constructed  
26 units on previously vacant land but shall not mean any construction  
27 or reconstruction of a single- or two-family house occupied as a  
28 primary residence.

29 q. "Substandard dwelling" means a dwelling of any age that  
30 requires the repair, completion, or replacement of plumbing, kitchen  
31 or heating facilities.

32 (cf: P.L.2008, c.46, s.5)

33  
34 4. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to  
35 read as follows:

36 7. It shall be the duty of the council, seven months after the  
37 confirmation of the last member initially appointed to the council,  
38 or January 1, 1986, whichever is earlier, and from time to time  
39 thereafter, to:

40 a. Determine housing regions of the State;

41 b. Estimate the present and prospective need for low and  
42 moderate income housing at the State and regional levels.

43 (1) Notwithstanding any regulation of the council to the  
44 contrary, the council shall base the prospective need portion of the  
45 fair share obligation solely on the amount of growth that has  
46 occurred, or is projected to occur, in accordance with the definition  
47 of growth in section 4 of P.L.1985, c.222 (C.52:27D-304). Nothing

1 in this subparagraph shall apply to the amount of units which may  
2 be required to be set-aside for low and moderate income households  
3 when market-rate housing development occurs;

4 (2) In estimating the present and prospective need under his  
5 section, the council shall filter out those units of housing actually  
6 supplied through federal programs, including project or tenant-  
7 based section 8 programs, public housing subject to federal Housing  
8 and Urban Development (HUD) regulations, or housing financed  
9 through federal low income tax credits, and any housing financed  
10 through any State resources, including, but not limited to, moneys  
11 loaned or granted through the Department of Community Affairs.

12 c. Adopt criteria and guidelines for:

13 (1) Municipal determination of its present and prospective fair  
14 share of the housing need in a given region which shall be  
15 computed for a 10-year period, other than the housing round period  
16 ending in the year 2018, and which determination shall be in  
17 accordance with the definition of growth as set forth in section 4 of  
18 P.L.1985, c.222 (C.52:27D-304).

19 Municipal fair share shall be determined after crediting on a one-  
20 to-one basis each current unit of low and moderate income housing  
21 of adequate standard, including any such housing constructed or  
22 acquired as part of a housing program specifically intended to  
23 provide housing for low and moderate income households.  
24 Notwithstanding any other law to the contrary, a municipality shall  
25 be entitled to a credit for a unit if it demonstrates that (a) the  
26 municipality issued a certificate of occupancy for the unit, which  
27 was either newly constructed or rehabilitated between April 1, 1980  
28 and December 15, 1986; (b) a construction code official certifies,  
29 based upon a visual exterior survey, that the unit is in compliance  
30 with pertinent construction code standards with respect to structural  
31 elements, roofing, siding, doors and windows; (c) the household  
32 occupying the unit certifies in writing, under penalty of perjury, that  
33 it receives no greater income than that established pursuant to  
34 section 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for  
35 moderate income housing; and (d) the unit for which credit is  
36 sought is affordable to low and moderate income households under  
37 the standards established by the council at the time of filing of the  
38 petition for substantive certification. It shall be sufficient if the  
39 certification required in subparagraph (c) is signed by one member  
40 of the household. A certification submitted pursuant to this  
41 paragraph shall be reviewable only by the council or its staff and  
42 shall not be a public record;

43 Nothing in P.L.1995, c.81 shall affect the validity of substantive  
44 certification granted by the council prior to November 21, 1994, or  
45 of a judgment of compliance entered by any court of competent  
46 jurisdiction prior to that date. Additionally, any municipality that  
47 received substantive certification or a judgment of compliance prior

1 to November 21, 1994 and filed a motion prior to November 21,  
2 1994 to amend substantive certification or a judgment of  
3 compliance for the purpose of obtaining credits, shall be entitled to  
4 a determination of its right to credits pursuant to the standards  
5 established by the Legislature prior to P.L.1995, c.81. Any  
6 municipality that filed a motion prior to November 21, 1994 for the  
7 purpose of obtaining credits, which motion was supported by the  
8 results of a completed survey performed pursuant to council rules,  
9 shall be entitled to a determination of its right to credits pursuant to  
10 the standards established by the Legislature prior to P.L.1995, c.81;

11 (2) Municipal adjustment of the present and prospective fair  
12 share based upon available vacant and developable land,  
13 infrastructure considerations or environmental or historic  
14 preservation factors and adjustments shall be made whenever:

15 (a) The preservation of historically or important architecture and  
16 sites and their environs or environmentally sensitive lands may be  
17 jeopardized,

18 (b) The established pattern of development in the community  
19 would be drastically altered,

20 (c) Adequate land for recreational, conservation or agricultural  
21 and farmland preservation purposes would not be provided,

22 (d) Adequate open space would not be provided,

23 (e) The pattern of development is contrary to the planning  
24 designations in the State Development and Redevelopment Plan  
25 prepared pursuant to sections 1 through 12 of P.L.1985, c.398  
26 (C.52:18A-196 et seq.),

27 (f) Vacant and developable land is not available in the  
28 municipality, and

29 (g) Adequate public facilities and infrastructure capacities are  
30 not available, or would result in costs prohibitive to the public if  
31 provided.

32 (3) (Deleted by amendment, P.L.1993, c.31).

33 d. Provide population and household projections for the State  
34 and housing regions;

35 e. In its discretion, place a limit, based on a percentage of  
36 existing housing stock in a municipality and any other criteria  
37 including employment opportunities which the council deems  
38 appropriate, upon the aggregate number of units which may be  
39 allocated to a municipality as its fair share of the region's present  
40 and prospective need for low and moderate income housing. No  
41 municipality shall be required to address a fair share of housing  
42 units affordable to households with a gross household income of  
43 less than 80% of the median gross household income beyond 1,000  
44 units within ten years from the grant of substantive certification,  
45 unless it is demonstrated, following objection by an interested party  
46 and an evidentiary hearing, based upon the facts and circumstances  
47 of the affected municipality that it is likely that the municipality



1 through its zoning powers could create a realistic opportunity for  
2 more than 1,000 low and moderate income units within that ten-  
3 year period. For the purposes of this section, the facts and  
4 circumstances which shall determine whether a municipality's fair  
5 share shall exceed 1,000 units, as provided above, shall be a finding  
6 that the municipality has issued more than 5,000 certificates of  
7 occupancy for residential units in the ten-year period preceding the  
8 petition for substantive certification in connection with which the  
9 objection was filed.

10 For the purpose of crediting low and moderate income housing  
11 units in order to arrive at a determination of present and prospective  
12 fair share, as set forth in paragraph (1) of subsection c. of this  
13 section, housing units comprised in a community residence for the  
14 developmentally disabled, as defined in section 2 of P.L.1977,  
15 c.448 (C.30:11B-2), shall be fully credited pursuant to rules  
16 promulgated or to be promulgated by the council, to the extent that  
17 the units are affordable to persons of low and moderate income and  
18 are available to the general public.

19 For the purpose of crediting against the fair share obligation, a  
20 municipality shall be permitted to satisfy no less than one unit of  
21 fair share obligation for each rental assistance voucher sponsored  
22 for a period of not less than five years, in accordance with the  
23 provisions of P.L.2004, c.140 (C.52:27D-287.1 et al.), subparagraph  
24 (10) of subsection a. of section 11 of P.L.1985, c.222 (C.52:27D-  
25 311) and the regulations of the council.

26 The council, with respect to any municipality seeking substantive  
27 certification, shall require that a minimum percentage of housing  
28 units in any residential development resulting from a zoning change  
29 made to a previously non-residentially-zoned property, where the  
30 change in zoning precedes or follows the application for residential  
31 development by no more than 24 months, be reserved for occupancy  
32 by low or moderate income households, which percentage shall be  
33 determined by the council based on economic feasibility with  
34 consideration for the proposed density of development.

35 In carrying out the above duties, including, but not limited to,  
36 present and prospective need estimations the council shall give  
37 appropriate weight to pertinent research studies, government  
38 reports, decisions of other branches of government, implementation  
39 of the State Development and Redevelopment Plan prepared  
40 pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196  
41 et seq.) and public comment. To assist the council, the State  
42 Planning Commission established under that act shall provide the  
43 council annually with economic growth, development and decline  
44 projections for each housing region for the next ten years. The  
45 council shall develop procedures for periodically adjusting regional  
46 need based upon the low and moderate income housing that is

1 provided in the region through any federal, State, municipal or  
2 private housing program.

3 No housing unit subject to the provisions of section 5 of  
4 P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the  
5 barrier free subcode adopted by the Commissioner of Community  
6 Affairs pursuant to the "State Uniform Construction Code Act,"  
7 P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for  
8 inclusion in the municipal fair share plan certified by the council  
9 unless the unit complies with the requirements set forth thereunder.

10 Notwithstanding anything in this section to the contrary, a  
11 municipality may perform an exterior housing survey to determine  
12 the actual number of substandard units occupied by low- and  
13 moderate-income households. A municipality's rehabilitation  
14 obligation shall be presumed to be the number of housing units that  
15 are both substandard and occupied by households of low and  
16 moderate income as of the date of filing of a municipality's petition  
17 for substantive certification.

18 The council may rebut the presumption that the municipal  
19 exterior housing survey count is the rehabilitation share of a  
20 municipality's fair share affordable housing obligation by  
21 presenting credible evidence to the contrary. To rebut the  
22 presumption, the council may appeal to the Office of Administrative  
23 Law, in accordance with the regulations of the office.

24 (cf: 2008, c.46, s.6)

25

26 5. Section 9 of P.L.1985, c. 222 (C.52:27D-309) is amended to  
27 read as follows:

28 9. a. Within four months after the effective date of this act,  
29 each municipality which so elects shall, by a duly adopted  
30 resolution of participation, notify the council of its intent to submit  
31 to the council its fair share housing plan. Within five months after  
32 the council's adoption of its criteria and guidelines, the municipality  
33 shall prepare and file with the council a housing element, based on  
34 the council's criteria and guidelines, and any fair share housing  
35 ordinance introduced and given first reading and second reading in  
36 a hearing pursuant to R.S. 40:49-2 which implements the housing  
37 element.

38 b. **[A]** Notwithstanding any rules of the council to the  
39 contrary, a municipality [which does not notify the council of its  
40 participation within four months may do so at any time thereafter]  
41 may notify the council of its intent to participate at any time. For  
42 the housing period covering 2004 to 2018, a municipality desiring  
43 to participate shall file a petition, accompanied by its housing  
44 element and fair share plan, and any other information required by  
45 the council, by December 1, 2009, or within 365 days of the  
46 effective date of P.L. , (C. ) (pending before the Legislature  
47 as this bill), whichever is later. In any exclusionary zoning

1 litigation instituted against such a municipality, however, there  
2 shall be no exhaustion of administrative remedy requirements  
3 pursuant to section 16 of this act unless the municipality also files  
4 its fair share plan and housing element with the council prior to the  
5 institution of the litigation.

6 (cf: P.L.1985, c. 222, s. 9)

7  
8 6. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended  
9 to read as follows:

10 1. When computing a municipal adjustment regarding available  
11 land resources as part of the determination of a municipality's fair  
12 share of affordable housing, including prior round unmet need or  
13 prospective need calculations, the Council on Affordable Housing  
14 shall exclude from designating as vacant land:

15 (a) any land that is owned by a local government entity that as  
16 of January 1, 1997, has adopted, prior to the institution of a lawsuit  
17 seeking a builder's remedy or prior to the filing of a petition for  
18 substantive certification of a housing element and fair share plan, a  
19 resolution authorizing an execution of agreement that the land be  
20 utilized for a public purpose other than housing;

21 (b) any land listed on a master plan of a municipality as being  
22 dedicated, by easement or otherwise, for purposes of conservation,  
23 park lands or open space and which is owned, leased, licensed, or in  
24 any manner operated by a county, municipality or tax-exempt,  
25 nonprofit organization including a local board of education, or by  
26 more than one municipality by joint agreement pursuant to  
27 P.L.1964, c.185 (C.40:61-35.1 et seq.), for so long as the entity  
28 maintains such ownership, lease, license, or operational control of  
29 such land;

30 (c) any vacant contiguous parcels of land in private ownership  
31 of a size which would accommodate fewer than five housing units if  
32 current standards of the council were applied pertaining to housing  
33 density;

34 (d) historic and architecturally important sites listed on the State  
35 Register of Historic Places or National Register of Historic Places  
36 prior to the submission of the petition of substantive certification;

37 (e) agricultural lands when the development rights to these  
38 lands have been purchased or restricted by covenant;

39 (f) sites designated for active recreation that are designated for  
40 recreational purposes in the municipal master plan; and

41 (g) environmentally sensitive lands where development is  
42 [prohibited] restricted by any State or federal agency regulations.

43 No municipality shall be required to utilize for affordable  
44 housing purposes land that is excluded from being designated as  
45 vacant land, and the prospective fair share obligation shall be

1 proportionally reduced by an amount correlating to amount of land  
2 being excluded from being designated as vacant land.

3 (cf: P.L.2008, c.46, s.39)

4  
5 7. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to  
6 read as follows:

7 11. a. In adopting its housing element, the municipality may  
8 provide for its fair share of low and moderate income housing by  
9 means of any technique or combination of techniques which provide  
10 a realistic opportunity for the provision of the fair share. The  
11 housing element shall contain an analysis demonstrating that it will  
12 provide such a realistic opportunity, and the municipality shall  
13 establish that its land use and other relevant ordinances have been  
14 revised to incorporate the provisions for low and moderate income  
15 housing. In adopting its housing element and fair share plan, a  
16 exterior housing survey performed by a municipality shall be  
17 presumed to be correct, as provided in subsection e. of section 7 of  
18 P.L.1985, c.222 (C.52:27D-307). A municipality's determination of  
19 municipal present and prospective need, if determined in  
20 accordance with the methods and definitions set forth in P.L.1985,  
21 c.222 (C.52:27D-301 et al.) shall be presumed to be correct.

22 In preparing the housing element, the municipality shall consider  
23 the following techniques for providing low and moderate income  
24 housing within the municipality, as well as such other techniques as  
25 may be published by the council or proposed by the municipality:

26 (1) Rezoning for densities necessary to assure the economic  
27 viability of any inclusionary developments, either through  
28 mandatory set-asides or density bonuses, as may be necessary to  
29 meet all or part of the municipality's fair share in accordance with  
30 the regulations of the council and the provision of subsection h. of  
31 this section;

32 (2) Determination of the total residential zoning necessary to  
33 assure that the municipality's fair share is achieved;

34 (3) Determination of measures that the municipality will take to  
35 assure that low and moderate income units remain affordable to low  
36 and moderate income households for an appropriate period of not  
37 less than **【six】** 10 years;

38 (4) A plan for infrastructure expansion and rehabilitation if  
39 necessary to assure the achievement of the municipality's fair share  
40 of low and moderate income housing;

41 (5) Donation or use of municipally owned land or land  
42 condemned by the municipality for purposes of providing low and  
43 moderate income housing;

44 (6) Tax abatements for purposes of providing low and moderate  
45 income housing;

1 (7) Utilization of funds obtained from any State or federal  
2 subsidy toward the construction of low and moderate income  
3 housing;

4 (8) Utilization of municipally generated funds toward the  
5 construction of low and moderate income housing; **[and]**

6 (9) The purchase of privately owned real property used for  
7 residential purposes at the value of all liens secured by the property;  
8 excluding any tax liens, notwithstanding that the total amount of  
9 debt secured by liens exceeds the appraised value of the property,  
10 pursuant to regulations promulgated by the Commissioner of  
11 Community Affairs pursuant to subsection b. of section 41 of  
12 P.L.2000, c.126 (C.52:27D-311.2); and

13 (10)The sponsorship of rental assistance vouchers as permitted  
14 under rules to be adopted by the council in accordance with  
15 P.L. , c. , (C. ) (pending before the Legislature as this bill),  
16 through municipally-generated funds, including development fees  
17 authorized by the council to be collected, funds obtained from any  
18 State or federal government subsidy, the purchase or rental of  
19 privately-owned real property, or through any other municipally-  
20 sponsored subsidy.

21 b. The municipality may provide for a phasing schedule for the  
22 achievement of its fair share of low and moderate income housing.

23 c. (Deleted by amendment, P.L.2008, c.46)

24 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall  
25 require a municipality to raise or expend municipal revenues in  
26 order to provide low and moderate income housing. This  
27 subsection shall be construed as requiring a municipality to expend  
28 only those funds that are available in a municipal development fee  
29 trust fund for the provision of affordable housing in accordance  
30 with regulations of the council. A municipality shall not be  
31 required to raise or expend any other municipal revenues to meet  
32 allocations of affordable housing need as calculated by the council.

33 e. When a municipality's housing element includes the  
34 provision of rental housing units in a community residence for the  
35 developmentally disabled, as defined in section 2 of P.L.1977,  
36 c.448 (C.30:11B-2), which will be affordable to persons of low and  
37 moderate income, and for which adequate measures to retain such  
38 affordability pursuant to paragraph (3) of subsection a. of this  
39 section are included in the housing element, those housing units  
40 shall be fully credited as permitted under the rules of the council  
41 towards the fulfillment of the municipality's fair share of low and  
42 moderate income housing.

43 f. It having been determined by the Legislature that the  
44 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is  
45 a public purpose, a municipality or municipalities may utilize public  
46 monies to make donations, grants or loans of public funds for the  
47 rehabilitation of deficient housing units and the provision of new or

1 substantially rehabilitated housing for low and moderate persons,  
2 providing that any private advantage is incidental.

3 g. A municipality which has received substantive certification  
4 from the council, and which has actually effected the construction  
5 of the affordable housing units it is obligated to provide, may  
6 amend its affordable housing element or zoning ordinances without  
7 the approval of the council.

8 h. Whenever affordable housing units are proposed to be  
9 provided through an inclusionary development, a municipality shall  
10 provide, through its zoning powers, incentives to the developer,  
11 which shall include increased densities and reduced costs, in  
12 accordance with the regulations of the council and this subsection.

13 i. The council, upon the application of a municipality and a  
14 developer, may approve reduced affordable housing set-asides or  
15 increased densities to ensure the economic feasibility of an  
16 inclusionary development.

17 j. (1) Notwithstanding any regulations of the council to the  
18 contrary, a municipality may provide for an occupancy preference  
19 for available affordable housing units for low or moderate income  
20 veterans who served in time of war or other emergency, as defined  
21 by Section 1 of P.L.1963, c.171 (C.54:4-8.10).

22 (2) The council shall adopt, pursuant to the "Administrative  
23 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
24 regulations necessary to effectuate this subsection.

25 (cf: P.L. 2008, c.46, s.15)

26

27 8. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to  
28 read as follows:

29 12. a. **【**Except as prohibited under P.L.2008, c.46 (C.52:27D-  
30 329.1 et al.), **a】** A municipality may propose the transfer of up to  
31 50% of its fair share to another municipality within its housing  
32 region by means of a contractual agreement into which two  
33 municipalities voluntarily enter. A municipality may also propose a  
34 transfer by contracting with the agency or another governmental  
35 entity designated by the council if the council determines that the  
36 municipality has exhausted all possibilities within its housing  
37 region. A municipality proposing to transfer to another  
38 municipality, whether directly or by means of a contract with the  
39 agency or another governmental entity designated by the council,  
40 shall provide the council with the housing element and statement  
41 required under subsection c. of section 11 of P.L.1985, c.222  
42 (C.52:27D-311), and shall request the council to determine a match  
43 with a municipality filing a statement of intent pursuant to  
44 subsection e. of this section. Except as provided in subsection b. of  
45 this section, the agreement may be entered into upon obtaining  
46 substantive certification under section 14 of P.L.1985, c.222  
47 (C.52:27D-314), or anytime thereafter. The regional contribution

1 agreement entered into shall specify how the housing shall be  
2 provided by the second municipality, hereinafter the receiving  
3 municipality, and the amount of contributions to be made by the  
4 first municipality, hereinafter the sending municipality.

5 b. A municipality which is a defendant in an exclusionary  
6 zoning suit and which has not obtained substantive certification  
7 pursuant to P.L.1985, c.222 may request the court to be permitted to  
8 fulfill a portion of its fair share by entering into a regional  
9 contribution agreement. If the court believes the request to be  
10 reasonable, the court shall request the council to review the  
11 proposed agreement and to determine a match with a receiving  
12 municipality or municipalities pursuant to this section. The court  
13 may establish time limitations for the council's review, and shall  
14 retain jurisdiction over the matter during the period of council  
15 review. If the court determines that the agreement provides a  
16 realistic opportunity for the provision of low and moderate income  
17 housing within the housing region, it shall provide the sending  
18 municipality a credit against its fair share for housing to be  
19 provided through the agreement in the manner provided in this  
20 section. The agreement shall be entered into prior to the entry of a  
21 final judgment in the litigation. In cases in which a final judgment  
22 was entered prior to the date P.L.1985, c.222 takes effect and in  
23 which an appeal is pending, a municipality may request  
24 consideration of a regional contribution agreement; provided that it  
25 is entered into within 120 days after P.L.1985, c.222 takes effect.  
26 In a case in which a final judgment has been entered, the court shall  
27 consider whether or not the agreement constitutes an expeditious  
28 means of providing part of the fair share. Notwithstanding this  
29 subsection, no consideration shall be given to any regional  
30 contribution agreement of which the council did not complete its  
31 review and formally approve a recommendation to the court prior to  
32 the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.).

33 c. **【Except as prohibited under P.L.2008, c.46 (C.52:27D-329.1**  
34 **et al.), regional】** Regional contribution agreements shall be  
35 approved by the council, after review by the county planning board  
36 or agency of the county in which the receiving municipality is  
37 located. The council shall determine whether or not the agreement  
38 provides a realistic opportunity for the provision of low and  
39 moderate income housing within convenient access to employment  
40 opportunities. The council shall refer the agreement to the county  
41 planning board or agency which shall review whether or not the  
42 transfer agreement is in accordance with sound, comprehensive  
43 regional planning. In its review, the county planning board or  
44 agency shall consider the master plan and zoning ordinance of the  
45 sending and receiving municipalities, its own county master plan,  
46 and the State development and redevelopment plan. In the event  
47 that there is no county planning board or agency in the county in

1 which the receiving municipality is located, the council shall also  
2 determine whether or not the agreement is in accordance with  
3 sound, comprehensive regional planning. After it has been  
4 determined that the agreement provides a realistic opportunity for  
5 low and moderate income housing within convenient access to  
6 employment opportunities, and that the agreement is consistent with  
7 sound, comprehensive regional planning, the council shall approve  
8 the regional contribution agreement by resolution. All  
9 determinations of a county planning board or agency shall be in  
10 writing and shall be made within such time limits as the council  
11 may prescribe, beyond which the council shall make those  
12 determinations and no fee shall be paid to the county planning  
13 board or agency pursuant to this subsection.

14 d. In approving a regional contribution agreement, the council  
15 shall set forth in its resolution a schedule of the contributions to be  
16 appropriated annually by the sending municipality. A copy of the  
17 adopted resolution shall be filed promptly with the Director of the  
18 Division of Local Government Services in the Department of  
19 Community Affairs, and the director shall thereafter not approve an  
20 annual budget of a sending municipality if it does not include  
21 appropriations necessary to meet the terms of the resolution.  
22 Amounts appropriated by a sending municipality for a regional  
23 contribution agreement pursuant to this section are exempt from the  
24 limitations or increases in final appropriations imposed under  
25 P.L.1976, c.68 (C.40A:4-45.1 et seq.).

26 e. The council shall maintain current lists of municipalities  
27 which have stated an intent to enter into regional contribution  
28 agreements as receiving municipalities, and shall establish  
29 procedures for filing statements of intent with the council. No  
30 receiving municipality shall be required to accept a greater number  
31 of low and moderate income units through an agreement than it has  
32 expressed a willingness to accept in its statement, but the number  
33 stated shall not be less than a reasonable minimum number of units,  
34 not to exceed 100, as established by the council. The council shall  
35 require a project plan from a receiving municipality prior to the  
36 entering into of the agreement, and shall submit the project plan to  
37 the agency for its review as to the feasibility of the plan prior to the  
38 council's approval of the agreement. The agency may recommend  
39 and the council may approve as part of the project plan a provision  
40 that the time limitations for contractual guarantees or resale controls  
41 for low and moderate income units included in the project shall be  
42 less than 30 years, if it is determined that modification is necessary  
43 to assure the economic viability of the project.

44 f. The council shall establish guidelines for the duration and  
45 amount of contributions in regional contribution agreements. In  
46 doing so, the council shall give substantial consideration to the  
47 average of: (1) the median amount required to rehabilitate a low and



1 moderate income unit up to code enforcement standards; (2) the  
2 average internal subsidization required for a developer to provide a  
3 low income housing unit in an inclusionary development; (3) the  
4 average internal subsidization required for a developer to provide a  
5 moderate income housing unit in an inclusionary development.  
6 Contributions may be prorated in municipal appropriations  
7 occurring over a period not to exceed ten years and may include an  
8 amount agreed upon to compensate or partially compensate the  
9 receiving municipality for infrastructure or other costs generated to  
10 the receiving municipality by the development. Appropriations  
11 shall be made and paid directly to the receiving municipality or  
12 municipalities or to the agency or other governmental entity  
13 designated by the council, as the case may be.

14 g. The council shall require receiving municipalities to file  
15 annual reports with the agency setting forth the progress in  
16 implementing a project funded under a regional contribution  
17 agreement, and the agency shall provide the council with its  
18 evaluation of each report. The council shall take such actions as  
19 may be necessary to enforce a regional contribution agreement with  
20 respect to the timely implementation of the project by the receiving  
21 municipality.

22 **【No consideration shall be given to any regional contribution**  
23 **agreement for which the council did not complete its review and**  
24 **grant approval prior to the effective date of P.L.2008, c.46**  
25 **(C.52:27D-329.1 et al.). On or after the effective date of P.L.2008,**  
26 **c.46 (C.52:27D-329.1 et al.), no regional contribution agreement**  
27 **shall be entered into by a municipality, or approved by the council**  
28 **or the court.】**

29 (cf: P.L.2008, c.46, s.16)

30  
31 9. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to  
32 read as follows:

33 20. There is established in the Department of Community  
34 Affairs a separate trust fund, to be used for the exclusive purposes  
35 as provided in this section, and which shall be known as the "New  
36 Jersey Affordable Housing Trust Fund." The fund shall be a non-  
37 lapsing, revolving trust fund, and all monies deposited or received  
38 for purposes of the fund shall be accounted for separately, by source  
39 and amount, and remain in the fund until appropriated for such  
40 purposes. The fund shall be the repository of all State funds  
41 appropriated for affordable housing purposes, including the  
42 proceeds from the receipts of the additional fee collected pursuant  
43 to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49  
44 (C.46:15-7), proceeds from available receipts of the Statewide non-  
45 residential development fees collected pursuant to section 35 of  
46 P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or reverting from  
47 municipal development trust funds, or other monies as may be

1 dedicated, earmarked, or appropriated by the Legislature for the  
2 purposes of the fund. All references in any law, order, rule,  
3 regulation, contract, loan, document, or otherwise, to the  
4 "Neighborhood Preservation Nonlapsing Revolving Fund" shall  
5 mean the "New Jersey Affordable Housing Trust Fund." The  
6 department shall be permitted to utilize annually up to 7.5 percent  
7 of the monies available in the fund for the payment of any  
8 necessary administrative costs related to the administration of the  
9 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), the  
10 State Housing Commission, or any costs related to administration of  
11 P.L.2008, c.46 (C.52:27D-329.1 et al.).

12 a. Except as permitted pursuant to subsection g. of this section,  
13 the commissioner shall award grants or loans from this fund for  
14 housing projects and programs in municipalities whose housing  
15 elements have received substantive certification from the council, in  
16 municipalities receiving State aid pursuant to P.L.1978, c.14  
17 (C.52:27D-178 et seq.), in municipalities subject to builder's  
18 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328)  
19 or in receiving municipalities in cases where the council has  
20 approved a regional contribution agreement and a project plan  
21 developed by the receiving municipality.

22 Of those monies deposited into the "New Jersey Affordable  
23 Housing Trust Fund" that are derived from municipal development  
24 fee trust funds, or from available collections of Statewide non-  
25 residential development fees, a priority for funding shall be  
26 established for projects in municipalities that have petitioned the  
27 council for substantive certification.

28 Programs and projects in any municipality shall be funded only  
29 after receipt by the commissioner of a written statement in support  
30 of the program or project from the municipal governing body.

31 b. The commissioner shall establish rules and regulations  
32 governing the qualifications of applicants, the application  
33 procedures, and the criteria for awarding grants and loans and the  
34 standards for establishing the amount, terms and conditions of each  
35 grant or loan.

36 c. For any period which the council may approve, the  
37 commissioner may assist affordable housing programs which are  
38 not located in municipalities whose housing elements have been  
39 granted substantive certification or which are not in furtherance of a  
40 regional contribution agreement; provided that the affordable  
41 housing program will meet all or part of a municipal low and  
42 moderate income housing obligation.

43 d. Amounts deposited in the "New Jersey Affordable Housing  
44 Trust Fund" shall be targeted to regions based on the region's  
45 percentage of the State's low and moderate income housing need as  
46 determined by the council. Amounts in the fund shall be applied for  
47 the following purposes in designated neighborhoods:

- 1 (1) Rehabilitation of substandard housing units occupied or to  
2 be occupied by low and moderate income households;
- 3 (2) Creation of accessory apartments to be occupied by low and  
4 moderate income households;
- 5 (3) Conversion of non-residential space to residential purposes;  
6 provided a substantial percentage of the resulting housing units are  
7 to be occupied by low and moderate income households;
- 8 (4) Acquisition of real property, including purchases that are  
9 part of a market to affordable program as described in P.L. , c. ,  
10 (C. ) (pending before the Legislature as this bill), demolition and  
11 removal of buildings, or construction of new housing that will be  
12 occupied by low and moderate income households, or any  
13 combination thereof;
- 14 (5) Grants of assistance to eligible municipalities for costs of  
15 necessary studies, surveys, plans and permits; engineering,  
16 architectural and other technical services; costs of land acquisition  
17 and any buildings thereon; and costs of site preparation, demolition  
18 and infrastructure development for projects undertaken pursuant to  
19 an approved regional contribution agreement;
- 20 (6) Assistance to a local housing authority, nonprofit or limited  
21 dividend housing corporation or association or a qualified entity  
22 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for  
23 rehabilitation or restoration of housing units which it administers  
24 which: (a) are unusable or in a serious state of disrepair; (b) can be  
25 restored in an economically feasible and sound manner; and (c) can  
26 be retained in a safe, decent and sanitary manner, upon completion  
27 of rehabilitation or restoration; and
- 28 (7) Other housing programs for low and moderate income  
29 housing, including, without limitation, (a) infrastructure projects  
30 directly facilitating the construction of low and moderate income  
31 housing not to exceed a reasonable percentage of the construction  
32 costs of the low and moderate income housing to be provided and  
33 (b) alteration of dwelling units occupied or to be occupied by  
34 households of low or moderate income and the common areas of the  
35 premises in which they are located in order to make them accessible  
36 to handicapped persons.
- 37 e. Any grant or loan agreement entered into pursuant to this  
38 section shall incorporate contractual guarantees and procedures by  
39 which the division will ensure that any unit of housing provided for  
40 low and moderate income households shall continue to be occupied  
41 by low and moderate income households for at least 20 years  
42 following the award of the loan or grant, except that the division  
43 may approve a guarantee for a period of less than 20 years where  
44 necessary to ensure project feasibility.
- 45 f. Notwithstanding the provisions of any other law, rule or  
46 regulation to the contrary, in making grants or loans under this  
47 section, the department shall not require that tenants be certified as

1 low or moderate income or that contractual guarantees or deed  
2 restrictions be in place to ensure continued low and moderate  
3 income occupancy as a condition of providing housing assistance  
4 from any program administered by the department, when that  
5 assistance is provided for a project of moderate rehabilitation if the  
6 project (1) contains 30 or fewer rental units and (2) is located in a  
7 census tract in which the median household income is 60 percent or  
8 less of the median income for the housing region in which the  
9 census tract is located, as determined for a three person household  
10 by the council in accordance with the latest federal decennial  
11 census. A list of eligible census tracts shall be maintained by the  
12 department and shall be adjusted upon publication of median  
13 income figures by census tract after each federal decennial census.

14 g. In addition to other grants or loans awarded pursuant to this  
15 section, and without regard to any limitations on such grants or  
16 loans for any other purposes herein imposed, the commissioner  
17 shall annually allocate such amounts as may be necessary in the  
18 commissioner's discretion, and in accordance with section 3 of  
19 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants  
20 under the program created pursuant to P.L.2004, c.140 (C.52:27D-  
21 287.1 et al.). Such rental assistance grants shall be deemed  
22 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-  
23 301 et al.), in order to meet the housing needs of certain low income  
24 households who may not be eligible to occupy other housing  
25 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

26 h. The department and the State Treasurer shall submit the  
27 "New Jersey Affordable Housing Trust Fund" for an audit annually  
28 by the State Auditor or State Comptroller, at the discretion of the  
29 Treasurer. In addition, the department shall prepare an annual  
30 report for each fiscal year, and submit it by November 30th of each  
31 year to the Governor and the Legislature, and the Joint Committee  
32 on Housing Affordability, or its successor, and post the information  
33 to its web site, of all activity of the fund, including details of the  
34 grants and loans by number of units, number and income ranges of  
35 recipients of grants or loans, location of the housing renovated or  
36 constructed using monies from the fund, the number of units upon  
37 which affordability controls were placed, and the length of those  
38 controls. The report also shall include details pertaining to those  
39 monies allocated from the fund for use by the State rental assistance  
40 program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3)  
41 and subsection g. of this section. In the event the department fails  
42 to issue the annual report, as required by this subsection, the penalty  
43 provisions of R.S.52:14-18 shall apply.

44 i. The commissioner shall submit to the Legislature a copy of  
45 any grant or loan awarded from the "New Jersey Affordable  
46 Housing Trust Fund." If the Legislature does not disapprove the  
47 grant or loan by the adoption of a concurrent resolution within 60

1 days of the submission to the Legislature of the notice of the award,  
2 the grant shall be deemed authorized.

3 (cf: P.L.2008, c.46, s.17)  
4

5 10. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to  
6 read as follows:

7 8. a. The council may authorize a municipality that has  
8 petitioned for substantive certification, or that has been so  
9 authorized by a court of competent jurisdiction, and which has  
10 adopted a municipal development fee ordinance to impose and  
11 collect development fees from developers of residential property, in  
12 accordance with rules promulgated by the council. Each amount  
13 collected shall be deposited and shall be accounted for separately,  
14 by payer and date of deposit.

15 A municipality may not spend or commit to spend any affordable  
16 housing development fees, including Statewide non-residential fees  
17 collected and deposited into the municipal affordable housing trust  
18 fund, without first obtaining the council's approval of the  
19 expenditure. The council shall promulgate regulations regarding  
20 the establishment, administration and enforcement of the  
21 expenditure of affordable housing development fees by  
22 municipalities. The council shall have exclusive jurisdiction  
23 regarding the enforcement of these regulations, provided that any  
24 municipality which is not in compliance with the regulations  
25 adopted by the council may be subject to forfeiture of any or all  
26 funds remaining within its municipal trust fund. Any funds so  
27 forfeited shall be deposited into the "New Jersey Affordable  
28 Housing Trust Fund" established pursuant to section 20 of  
29 P.L.1985, c.222 (C.52:27D-320).

30 b. A municipality shall deposit all fees collected, whether or  
31 not such collections were derived from fees imposed upon non-  
32 residential or residential construction into a trust fund dedicated to  
33 those purposes as required under this section, and such additional  
34 purposes as may be approved by the council.

35 c. (1) A municipality may only spend development fees for an  
36 activity approved by the council to address the municipal fair share  
37 obligation.

38 (2) Municipal development trust funds shall not be expended to  
39 reimburse municipalities for activities which occurred prior to the  
40 authorization of a municipality to collect development fees.

41 (3) A municipality shall set aside a portion of its development  
42 fee trust fund for the purpose of providing affordability assistance  
43 to low and moderate income households in affordable units  
44 included in a municipal fair share plan, in accordance with rules of  
45 the council.

46 (a) Affordability assistance programs may include down  
47 payment assistance, security deposit assistance, low interest loans,

1 common maintenance expenses for units located in condominiums,  
2 rental assistance, including a municipal rental voucher program, and  
3 any other program authorized by the council.

4 (b) Affordability assistance to households earning 30 percent or  
5 less of median income may include buying down the cost of low  
6 income units in a municipal fair share plan to make them affordable  
7 to households earning 30 percent or less of median income. The use  
8 of development fees in this manner shall not entitle a municipality  
9 to bonus credits except as may be provided by the rules of the  
10 council.

11 (4) A municipality may contract with a private or public entity  
12 to administer any part of its housing element and fair share plan,  
13 including the requirement for affordability assistance, or any  
14 program or activity for which the municipality expends  
15 development fee proceeds, in accordance with rules of the council.

16 (5) Not more than 20 percent of the revenues collected from  
17 development fees shall be expended on administration, in  
18 accordance with rules of the council.

19 d. The council shall establish a time by which all development  
20 fees collected within a calendar year shall be expended; provided,  
21 however, that all fees shall be committed for expenditure within  
22 four years from the date of collection. A municipality that fails to  
23 commit to expend the balance required in the development fee trust  
24 fund by the time set forth in this section shall be required by the  
25 council to transfer the remaining unspent balance at the end of the  
26 four-year period to the "New Jersey Affordable Housing Trust  
27 Fund," established pursuant to section 20 of P.L.1985, c.222  
28 (C.52:27D-320), as amended by P.L.2008, c.46 (C.52:27D-329.1 et  
29 al.), to be used in the housing region of the transferring  
30 municipality for the authorized purposes of that fund.

31 e. Notwithstanding any provision of this section, or regulations  
32 of the council, a municipality shall not collect a development fee  
33 from a developer whenever that developer is providing for the  
34 construction of affordable units, either on-site or elsewhere within  
35 the municipality.

36 f. Notwithstanding any provision of this section, or regulations  
37 of the council, a municipality shall not collect a development fee for  
38 any construction or reconstruction of an owner-occupied one- or  
39 two-family residential property. For purposes of this subsection,  
40 "owner-occupied" refers to premises owned by a natural person that  
41 are occupied, or are to be occupied, by that person or a member of  
42 that person's immediate family, as a primary residence.

43 This section shall not apply to the collection of a Statewide  
44 development fee imposed upon non-residential development  
45 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1

1 et seq.) by the State Treasurer, when such collection is not  
2 authorized to be retained by a municipality.  
3 (cf: P.L.2008, c.46, s.8)  
4

5 11. Section 9 of P.L.2008, c.46 (C.52:27D-329.3) is amended to  
6 read as follows

7 9. a. The council may authorize a municipality that has  
8 petitioned for substantive certification to impose and collect  
9 payments-in-lieu of constructing affordable units on site upon the  
10 construction of residential development, which payments may be  
11 imposed and collected as provided pursuant to the rules of the  
12 council. Payment-in-lieu fees shall be deposited into a trust fund,  
13 and accounted for separately from any other fees collected by a  
14 municipality. Whenever a payment-in-lieu is charged by a  
15 municipality pursuant to this subsection, a development fee  
16 authorized pursuant to section 8 of P.L.2008, c.46 (C.52:27D-  
17 329.2) shall not be charged in connection with the same  
18 development.

19 b. A municipality shall commit to expend collections from  
20 payments-in-lieu imposed pursuant to subsection a. of this section  
21 within four years of the date of collection. The council may extend  
22 this deadline if the municipality submits sufficient proof of building  
23 or other permits, or other efforts concerning land acquisition or  
24 project development. The council shall provide such administrative  
25 assistance as may be required to aid in the construction of  
26 affordable housing units. A municipality that fails to commit to  
27 expend the amounts collected pursuant to this section within the  
28 timeframes established shall be required to transfer any unexpended  
29 revenue collected pursuant to subsection a. of this section to the  
30 "New Jersey Affordable Housing Trust Fund," established pursuant  
31 to section 20 of P.L.1985, c.222 (C.52:27D-320), to be used within  
32 the same housing region for the authorized purposes of that fund, in  
33 accordance with regulations promulgated by the council.

34 c. Notwithstanding any provision of this section, or regulations  
35 of the council, a municipality shall not collect any payment-in-lieu  
36 fee for any construction or reconstruction of an owner-occupied  
37 one- or two-family residential property. For purposes of this  
38 subsection, "owner-occupied" refers to premises owned by a natural  
39 person that are occupied, or are to be occupied, by that person or a  
40 member of that person's immediate family, as a primary residence.

41 (cf: PL.2008, c.46, s.9)  
42

43 12. (New section) a. A market to affordable program shall  
44 include units purchased or subsidized through a written agreement  
45 with the property owner and sold or rented to low- and moderate-  
46 income households. Subject to the provisions of subsection b. of  
47 this section, market to affordable programs may be designed to

1 produce only low-income units, only moderate-income units or both  
2 low- and moderate-income units.

3 b. A municipality may address any portion, including the  
4 entirety, of its fair share obligation with units acquired as part of a  
5 market to affordable program. The council shall credit each unit  
6 acquired, paid down, and offered as affordable against the fair share  
7 obligation of a municipality.

8 c. The following provisions shall apply to market to affordable  
9 programs:

10 (1) At the time they are offered for sale or rental, eligible units  
11 may be new, pre-owned or vacant.

12 (2) The units shall be certified to be in sound condition as a  
13 result of an inspection performed by a licensed building inspector.

14 (3) A municipality may address its fair share obligation using  
15 for-sale or rental units acquired as part of a market to affordable  
16 program.

17  
18 13. (New section) Notwithstanding any other provision of  
19 P.L.1985, c.222 (C.52:27D-301 et al.) or any supplements thereto, a  
20 municipality authorized to collect development fees pursuant to  
21 P.L. 1985, c.222 (C.52:27D-301 et al.) or P.L.2008, c.46  
22 (C.52:27D-329.1 et al.) may allocate up to 25% of the fees collected  
23 annually towards moderate-income housing for persons working in  
24 the municipality, or within a 10 mile radius of the municipality. For  
25 the purpose of this section, the maximum income limitations of the  
26 Council on Affordable Housing for moderate income households  
27 shall be extended to 120% of the regional median income  
28 limitations as established by the council.

29  
30 14. (New section) a. A developer who was subject to the  
31 payment of a nonresidential development fee pursuant to Section 35  
32 of P.L.2008, c.46 (C.40:55D-8.4) prior to the enactment of  
33 P.L. , c. (C. ) (pending before the Legislature as this bill)  
34 shall be entitled to a return of any moneys paid.

35 b. If moneys are required to be returned under subsection a. of  
36 this section, a claim shall be submitted, in writing, to the same  
37 entity to which the moneys were paid, within 120 days of the  
38 effective date of P.L. , c. (C. ) (pending before the  
39 Legislature as this bill). The entity to whom the funds were paid  
40 shall promptly review all requests for returns, and the fees paid  
41 shall be returned to the claimant within 30 days of receipt of the  
42 claim for return.

43  
44 15. The following sections are repealed:

45 Section 32 of P.L.2008, c.46 (C.40:55D-8.1);

46 Section 33 of P.L.2008, c.46 (C.40:55D-8.2);

47 Section 34 of P.L.2008, c.46 (C.40:55D-8.3);



1 Section 35 of P.L.2008, c.46 (C.40:55D-8.4);  
2 Section 36 of P.L.2008, c.46 (C.40:55D-8.5);  
3 Section 37 of P.L.2008, c.46 (C.40:55D-8.6);  
4 Section 38 of P.L.2008, c.46 (C.40:55D-8.7);  
5 Section 12 of P.L.2008, c.46 (C.52:27D-329.6); and  
6 Section 14 of P.L.2008, c.46 (C.52:27D-329.8).

7  
8 16. This act shall take effect immediately.  
9

10  
11 STATEMENT  
12

13 This bill revises the laws concerning the provision of affordable  
14 housing. This legislation amends the “Fair Housing Act,” P.L.  
15 1985, c.222 (C.52:27D-301 et al.) as well P.L.2008, c.46, which  
16 was recently enacted.

17 The bill would reestablish the regional contribution agreement as  
18 a viable method for a municipality to assist in affordable housing  
19 construction. The bill repeals the recently enacted Statewide non-  
20 residential development fee and requires refunds of moneys paid.  
21 The bill also eliminates the growth share approach of the Council  
22 on Affordable Housing as applied to commercial and industrial  
23 development. Requiring a set-aside for affordable housing as part  
24 of residential development is authorized under the bill.

25 The bill permits municipalities to meet affordable housing  
26 obligations through local rental voucher programs, and would  
27 permit occupancy preference for veterans in all affordable housing  
28 units. All subsidized housing produced through State or federal  
29 funds would be required to be credited against the fair share  
30 housing obligation. The bill extends the time for filing a petition  
31 with COAH to December 1, 2009, or 365 days after the enactment  
32 of the bill, whichever is later.

33 The bill permits municipalities to conduct their own exterior  
34 housing survey concerning units in need of rehabilitation, and  
35 permits the survey count, as well as the municipal determination of  
36 present and prospective need, to be presumptively dispositive for  
37 the calculation required under the Fair Housing Act. This directly  
38 addresses the court’s misinterpretation of current law in a recent  
39 Appellate Division case, in which the court questioned the wisdom  
40 of permitting municipal determination of need, stating that this  
41 provision would allow municipalities the choice to “just not grow.”  
42 To the contrary, municipalities must permit growth under the  
43 “Municipal Land Use Law,” as they are forbidden to place  
44 moratoriums on development, except for limited time periods when  
45 public health is an issue. The bill also defines “growth” under the  
46 Fair Housing Act as the number of units of actual new residential  
47 construction not reserved for occupancy by low and moderate

1 income households located on previously vacant land within a  
2 municipality.

3 The bill requires that, prior to funding of projects from the “New  
4 Jersey Affordable Housing Trust Fund,” the Legislature must be  
5 given the option of disapproving them. The bill requires the Trust  
6 Fund to produce an annual report and imposes penalties if the report  
7 is not provided.

8 This legislation also provides that, when municipalities are  
9 granted a vacant land adjustment, densities in remaining parcels  
10 shall not increased for purposes of calculating the municipalities'  
11 prospective fair share housing obligation.

12 The bill eliminates the cap on existing housing units that may  
13 used to satisfy the fair share obligation, thus opening the possibility  
14 of foreclosed-upon housing units being available to satisfy the  
15 housing need. The bill prohibits a municipality from charging a  
16 development fee or in lieu of building fee from a person building or  
17 rebuilding a single- or two-family home in which they or a family  
18 member will reside and use as a primary residence from being  
19 charged a development fee or an in lieu of building fee under the  
20 Fair Housing Act. These units are also excluded from the definition  
21 of growth.